

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

WESTERN WAYNE URGENT CARE, P.C.,

Plaintiff,

Judge Bernard A. Friedman

v.

2:15-cv-13077-BAF-MKM

FENSTER-MARTENS HOLDING
COMPANY doing business as
ENTERPRISE MEDICAL SERVICES,
and JOHN DOES 1-10,
Defendants.

FINAL APPROVAL ORDER

WHEREFORE, it appearing to the Court that:

A. On March 23, 2017, this Court entered a Preliminary Approval Order which, among other things, preliminarily and conditionally certified this lawsuit to proceed as a class action for settlement purposes only, defined the Settlement Class and Settlement Class Claims, appointed Settlement Class Counsel, preliminarily approved the proposed Settlement Agreement (“Agreement”) which would be binding on the Settlement Class, provided for notice to the Settlement Class including an opportunity for Settlement Class members to request exclusion from the Settlement Class and to object to the proposed Agreement, and scheduled a

hearing (“Final Hearing”) for July 5, 2017, to consider any objections and to determine whether the proposed settlement is fair, reasonable, and adequate.

B. In accordance with the Court’s Preliminary Approval Order, on March 23, 2017, actual notice was sent by first class mail to **189** Class Members by Class-Settlement.com (the “Class Administrator”). A total of **22** notices were returned by the United States Postal Service as undeliverable with no forwarding address or further information; **3** notices were returned by the United States Postal Service with a new address and successfully re-mailed.

C. On **July 5, 2017**, in accordance with the Preliminary Approval Order and Fed. R. Civ. P. 23(e)(2), counsel for the Plaintiff appeared for the Final Fairness Hearing to determine whether the action satisfies the applicable prerequisites for class action treatment and whether the proposed settlement is fundamentally fair, reasonable, adequate, and in the best interest of the Class Members and should be approved by the Court;

D. The Class Members were given an opportunity to opt-out or object to the settlement. **NO** Class Members opted out of the settlement; and

E. With the Court having concluded that the proposed settlement is fair, reasonable, and adequate; and the Court being duly advised in the premises, and for good cause shown;

IT IS HEREBY ORDERED AND ADJUDGED:

1. This Final Order incorporates by reference the definition in the Agreement, and all defined terms used herein shall have the same meanings as set forth in the Settlement Agreement.

2. The Court confirms its certification in the Preliminary Approval Order of this lawsuit as a class action for settlement purposes only and, in accordance with Fed. R. Civ. P. 23(b)(3), defines the “Settlement Class” as:

All persons and entities with fax numbers who during the Class Period of August 28, 2011 through and including August 28, 2015, were sent faxes by or on behalf of Fenster-Martens Holding Company d/b/a Enterprise Medical Services promoting its or their goods or services for which it/they did not obtain prior consent from the fax recipient and which did not contain an opt out notice as described in 47 U.S.C. § 227.

3. The Court declares that the Parties’ Notice Plan as set forth in the Agreement, including the notice mailed to Class Members, satisfied the requirements of Fed. R. Civ. P. 23, constitutional due process, and constituted the best notice practicable under the circumstances.

4. The Court hereby finds and concludes that the notifications required by the Class Action Fairness Act under 28 U.S.C. § 1715(b) have been provided.

5. The Court approves the disbursement of the Settlement Fund as provided for in the Agreement and directs that the Class Administrator disburse the payments in accordance with the terms of the Stipulation.

6. The Court approves the award of attorneys' fees and costs to Class Counsel, in the amount of \$11,000.00, and declares such fees and costs, and the hourly rates sought, to be fair and reasonable.

7. The Agreement, which was filed with the Court on **March 17, 2017** (Doc.57-1), is finally approved and shall be consummated in accordance with the terms and provisions thereof, except as amended by any subsequent order issued by this Court.

8. With respect to determination that the Agreement is fair, reasonable and adequate, the Court specifically notes that this litigation involved complex and novel factual and legal issues, and the settlement amount reflects a substantial benefit to Class Members.

9. This Order is binding on all Class Members, as no individual or entity has sought to be excluded themselves from the Settlement Class.

10. Pursuant to the release contained in the Agreement, the Released Claims are compromised, settled, released, and discharged by virtue of these proceedings and this Order.

11. The Court hereby permanently enjoins and restrains all Class Members who did not duly require exclusion from the class in the time and manner provided for in the Class Notice from commencing or prosecuting any action, suit,

claim or demand against any of the parties released by virtue of the Agreement arising out of or relating to the Released Claims as set forth in the Agreement.

12. The Lawsuit is hereby dismissed without prejudice, and without costs.

13. The Court retains jurisdiction over the interpretation, enforcement, and implementation of the Agreement and this Final Order, along with continuing and exclusive jurisdiction over the parties, including all members of the Class, in conjunction with the execution, consummation, administration and enforcement of the terms of the Agreement.

14. Class Counsel shall file by **November 21, 2017** a notice apprising the Court that the terms of the Settlement Agreement have been complied with and providing the Court with an accounting of how the money provided for by the settlement was distributed.

IT IS SO ORDERED:

s/ Bernard A. Friedman

HONORABLE BERNARD A. FRIEDMAN
United States District Judge United States
District Judge

Dated: July 7, 2017